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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/708,027

02/03/2004

Yung-Chieh Lo

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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
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EXAMINER

HOUSHMAND, HOOMAN

ART UNIT

PAPER NUMBER

2419

NOTIFICATION DATE

DELIVERY MODE

02/20/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/708,027</p>	<p>Applicant(s) LO ET AL.</p>	
	<p>Examiner Hooman Houshmand</p>	<p>Art Unit 2419</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16 and 20-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Hassan Kizou/
Supervisory Patent Examiner, Art Unit 2419

Continuation of 11. does NOT place the application in condition for allowance because:
The main argument on pages 10-16 is the obvious to try rejection of claim 1 is improper. Examiner respectfully disagrees.

The claimed limitations are: "A method for fragmenting an incoming packet for transmission

as a first outgoing packet and a second outgoing packet, the method comprising:
storing a payload of the incoming packet in a plurality of storage units beginning in
a first storage unit;

transmitting the first outgoing packet being formed according to a predetermined
portion of the payload stored in the first storage unit; and
after transmitting the first outgoing packet, transmitting the second outgoing packet
being formed according to a remaining portion of the payload stored in the storage
units;

wherein the remaining portion corresponds to a majority of the payload of the
incoming packet."

The rejection of these limitations is clarified below:

Packet based systems divide up large packets into a number of smaller packets. E.g., a packet A may be divided into 2, 3, 4, 5,... number of smaller packets. Let us consider a division into two smaller packets. Packet A is hence divided up into two packets: packet B + packet C. As far as the sizes of these packets are concerned, there are three possibilities:

1) size of packet B > size of packet C; 2) size of packet B = size of packet C; and 3) size of packet B < size of packet C.

Packet based systems are store and forward systems. Hence after packet A is fragmented, its fragments B and C are stored in the communication device waiting to be transmitted. When the timing is proper to transmit packets, the serial data communication device would sequentially transmit the packets in its memory. For the example being discussed here, there are two possibilities:

i) transmit packet B followed by packet C; and ii) transmit packet C followed by packet B.

Now comparing scenarios i and ii with the possibilities for sizes 1, 2, 3 the following conclusions are drawn:

Either the smaller or larger packet gets transmitted first - when the packets have equal sizes, the comparison is moot.

In light of the above analysis the individual limitations are addressed below:

"A method for fragmenting an incoming packet for transmission

as a first outgoing packet and a second outgoing packet"

In packet based systems packets are routinely divided up into smaller packets and the division into two portions is one such case.

"storing a payload of the incoming packet in a plurality of storage units beginning in
a first storage unit"

packet based systems are store and forward systems.

"transmitting the first outgoing packet being formed according to a predetermined
portion of the payload stored in the first storage unit"

As noted earlier the packet was divided up into two packets.

"after transmitting the first outgoing packet, transmitting the second outgoing packet
being formed according to a remaining portion of the payload stored in the storage
units"

In serial data links the packets are transmitted one after the other. As discussed above this is the second portion of the packet that was divided up.

"the remaining portion corresponds to a majority of the payload of the
incoming packet"

As discussed above, not considering when the size of the two packets formed being equal, there are two possibilities when a packet is divided up into two: First is the remaining portion is smaller and the other possibility is that the remaining portion is larger.

Reformulating this discussion in the terms of claim language: either the remaining portion corresponds to a majority or minority of the payload of the incoming packet. Therefore, there are only two possibilities for the transmission of these two packets. Either the packet corresponding to the majority or the minority of the payload of the incoming packet - is transmitted first.

Since in this engineering system, there are only two possibilities - it would have been obvious to a person having ordinary skill in the art to try both transmission possibilities.

In engineering research labs, the various possibilities are commonly tried and experimented with. Data is collected and analyzed to decide which version better meets the optimal performance requirements.